

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 445 of 2020**Tuesday, this the 13th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Rfn Harvir Singh, Village and Post – Bichhwan, Dist-Mainpuri
(U.P.)-205267.**.... Applicant**Ld. Counsel for the: **Shri Rohit Kumar Sharma**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ, PO-New Delhi-110011.
3. Additional Director General Personnel Services (PS-4), Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
4. Officer –in-Charge, Records RAJRIF, PIN-900106 C/O 56 APO.
5. Controller Defence Account (Pension), Draupadi Ghat Allahabad (UP).

... RespondentsLd. Counsel for the: **Shri Shyam Singh**, Advocate
Respondents. Central Govt. Standing Counsel.

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(a) Call for records including the Invalid medical board proceedings dated 06.10.1995.

(b) Quash the findings of Invalid medical board dated 06.10.1995 by which the applicant has been denied disability pension.

(c) Issue directions to respondents to grant disability pension to the applicant w.e.f. 07.11.1995 and arrears to be paid along with interest of 18 percent in a time bound manner.

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 01.03.1994 and after having completed more than 01 years, 02 months and 08 days of service and he was Invalided out from service in low medical category EEE due to disability "**GENERALISE SEIZURE-345**" on 05.01.1965(FN). Prior to discharge from service the was brought before Invalid Medical Board (IMB) held on 17.10.1995 which assessed the applicant to be suffering from "**GENERALISE SEIZURE-345**@ 11-14% for two years and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension

claim preferred by applicant was rejected vide order dated 22.08.1996 with directions to submit an appeal within six months, but did not so. Thereafter applicant was filed a CWP No. 5553 of 1997 in the Hon'ble High Court Delhi for re-instatement and grant of disability pension, but the same was dismissed as withdrawn on 19.07.2006. Thereafter applicant submitted an application under RTI ACT 2005 in the month of Nov 2017 with direction to submit an appeal if not satisfied, but did not so. Applicant filed this OA for grant of disability pension.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that applicant, in February 1995 while posted

at Delhi, was diagnosed to be suffering from '**GENERALISE SEIZURE-345**'. This disease he feels is due to stress and strain related to rigors of military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the IMB has declared the applicant's disability as NANA, therefore, the competent authority has rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of IMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors,*** (2013) 7 SCC 213. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical

Officers to sum up the legal position emerging from the same in the following words:-

"29.1. Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation to applicant only by endorsing a

cryptic sentence in the proceedings i.e. 'disease is constitutional in nature'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in 14.02.1995 i.e. after completion of about 11 months years of his service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service.

8. In view of the above applicant is held entitled to 11-14% disability pension for two years from the date of his discharge i.e. 06.11.1995.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service. *Since applicant's disability was assessed for two years from the date of discharge, he is eligible for disability pension for that period only. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability pension of pension shall be subject to outcome of RSMB.*

10. No order as to costs.

12. Pending applications, if any, disposed off

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 13th Jul, 2021

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